

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
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Rural Call Completion)
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WC Docket No. 13-39

REPLY COMMENTS OF
ASSOCIATED NETWORK PARTNERS, INC.
AND ZONE TELECOM, INC.

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SUMMARY

The Notice of Proposed Rulemaking (“NPRM”) issued in this proceeding addresses a chronic and long standing rural call completion problem that must be addressed by prompt and effective regulatory action. The initial comments on the NPRM show that some parties deny the existence of a rural call completion problem. The Commission should reject these contentions. There is ample evidence in the NPRM and in the initial comments of other parties on the NPRM to establish that the rural call completion problem is real and urgent.

Associated Network Partners, Inc. and Zone Telecom, Inc. (“ANPI”) showed in their initial comments that rural call completion problems primarily result from schemes to bypass relatively higher rural ILEC access charges through the use of low cost and low quality termination services. Several parties in their initial comments on the NPRM seek to divert the Commission’s attention from this root cause of the problem. The Commission should not allow this proceeding to be turned into a shell game. It should reject these misleading allegations. In order to develop an effective regulatory response to the problem, the Commission needs to focus on unlawful bypass schemes.

Several parties contend that the Commission need not be concerned with bypass schemes based on arbitrage between interstate and intrastate access charges because differences between the two will soon be eliminated. These parties overlook the continuing incentive to disguise interexchange traffic as local or other traffic in order to escape paying any access charges. Accordingly, the Commission should reject contentions that the incentive to engage in arbitrage schemes that cause rural call completion problems will soon be eliminated.

The initial comments show that the data reporting requirements proposed in the NPRM are flawed and, as constructed, unnecessarily burdensome. If the Commission insists on having

a data reporting program, it should adopt minimum call completion standards and exception based reporting to reduce the burden of the requirements. However, data reporting requirements alone are an insufficient response to the unlawful schemes that primarily cause rural call completion problems.

As a supplement or alternative to data reporting requirements, the Commission should require by rule that every carrier certify, under penalty of forfeiting its legal authority to provide service, that it is complying with all applicable tariffs and FCC rules in respect to intercarrier compensation; that it is not terminating interexchange traffic as local PSTN traffic; that it has similar certifications from every carrier to which it is handing off traffic for termination; that it keeps such certifications on file; and that it will produce such certifications on proper request from the FCC and any state regulatory commission. The Commission must make this rule applicable to each and every entity that offers termination services, or terminates traffic to the PSTN in any way on behalf of another provider. This rule will effectively and directly target unlawful bypass schemes that cause rural call completion problems. The Commission should issue the necessary Order adopting such a rule with all deliberate speed to protect the integrity of the PSTN.

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INTRODUCTION

In accordance with the comment schedule established for this proceeding,¹ Associated Network Partners, Inc. and Zone Telecom, Inc. (hereafter “ANPI”) respectfully submit their comments in reply to the initial comments of other parties on the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding. ANPI submitted its initial comments on the NPRM on May 13, 2013. In its initial comments ANPI provided evidence of the long standing rural call completion problem addressed by the NPRM, noted flaws in the approach to the problem proposed in the NPRM, and outlined other more effective approaches the Commission should consider in this proceeding. Upon review of the initial comments of other parties, ANPI continues to urge the Commission to adopt ANPI’s initial recommendations as further developed, clarified and explained herein.

¹ *Rural Call Completion*, WC Docket No. 13-39, Order, DA13-1196 (rel. May 22, 2013) (extending reply comment date to June 11, 2013).

Nothing in the initial comments submitted by other parties effectively rebuts the evidence or recommendations provided by ANPI. In fact, the submissions of some parties corroborate ANPI's experience. Efforts by other parties to persuade the Commission that there is no rural call completion problem, or that it is primarily caused by something other than bypass schemes designed to evade the existing intercarrier compensation system, or that the problem will somehow resolve itself without effective regulatory intervention, are unsupported and unavailing. Consistent with its initial comments, ANPI agrees in part with those parties who find flaws in the NPRM's proposed reporting requirements. ANPI maintains that ineffectual, overly burdensome approaches to the rural call completion problem should be rejected.

As further explained herein, ANPI supports a regulatory program designed to combat more effectively unlawful bypass schemes that cause rural call completion problems. This program would mandate intra-industry documentation of compliance with tariff and applicable FCC intercarrier compensation requirements as a condition of providing services involved in terminating calls to the public switched telephone network ("PSTN"). Compliance would have to be enforceable through strong regulatory remedies, including revocation of legal authorization to provide services. Both the FCC and state commissions should promptly adopt such a forceful regulatory program to attack the rural call completion problem effectively and immediately.

No party could reasonably oppose such a program as it simply requires entities involved in terminating traffic to the PSTN to attest that they are in compliance with the FCC's own rules, and that the entities with which they do business for such purposes are also in compliance. The FCC has endorsed comparable certifications from the industry for other purposes without objection. By adopting such a requirement the Commission would affirm its commitment to the rule of law, enhance its ability to enforce its existing intercarrier compensation rules, as well as

take action consistent with its stated resolve to eliminate the rural call quality issue and restore the integrity of the PSTN. There is no reasonable basis to reject a requirement that would so clearly, simply and directly serve the public interest.

DISCUSSION

A. The Commission Should Reject Contentions That There is No Rural Call Completion Problem

The initial comments of several parties question the basic factual premise of the NPRM. These parties directly argue or imply that there is no rural call completion problem.² Some contend that the evidence cited in the NPRM has not been examined closely enough.³ One party inexplicably claims that “any increase in rural call completion complaints before the Commission over the past year may be due to factors other than increased call completion difficulties.”⁴ They criticize the evidence cited in the NPRM as “anecdotal”,⁵ yet rely on their own anecdotal evidence to imply there is no rural call completion problem.⁶ The Commission should squarely reject the desperate efforts of these deniers of rural call completion problems. There is ample and more than sufficient evidence cited in the NPRM to establish that there is a serious rural call completion problem.

Moreover, the initial comments of several parties provide additional evidence that rural call completion continues to be a serious problem. For example, ANPI in its initial comments provided the results from a survey in May of 120 ILEC customers in which 85% responded that

² See, e.g., Comments of Sprint Nextel Corp., WC Docket No. 13-39 (filed May 13, 2013) (“Comments of Sprint”) at 3-13; Comments of Centurylink, WC Docket No. 13-39 (filed May 13, 2013) at 6-8; Comments of Verizon and Verizon Wireless, WC Docket No. 13-39 (filed May 13, 2013) (“Comments of Verizon”) at 3-6.

³ See, e.g., Comments of Sprint at 5-7; Comments of Centurylink at 6-7.

⁴ Comments of Verizon at 5.

⁵ Comments of Centurylink at 6.

⁶ See, e.g., Comments of Verizon at 2, 5.

rural call completion problems persisted, and 51% characterized the problems as “serious” or “chronic.”⁷ Another party reported that “[h]istorically, completion and call quality issues to smaller carriers have constituted a significantly larger percentage of total call completion and call quality related care contacts than the percentage of domestic traffic sent to smaller carriers.”⁸ Other parties have confirmed that the rural call completion problems cited in the NPRM are still occurring.⁹ Moreover, as numerous parties have noted,¹⁰ the Commission has uncovered evidence of practices causing rural call completion problems from its own recent investigations and enforcement actions.¹¹

In short, there is substantial evidence cited in the NPRM and provided in the initial comments on the NPRM to establish a serious and continuing rural call completion problem. The Commission should reject all express or implied contentions to the contrary.

B. The Commission Should Reject Contentions That Rural Call Completion Problems Do Not Result from Efforts to Bypass the Existing Inter-carrier Compensation System

As ANPI showed in its initial comments, “impaired service quality is simply treated as collateral damage in ... schemes to bypass prevailing access charge structures in rural areas in

⁷ See Comments of ANPI, WC Docket No. 13-39 (filed May 13, 2013) at 5.

⁸ Comments of Vonage Holdings Corp., WC Docket No. 13-39 (filed May 13, 2013) at 2.

⁹ See, e.g., Comments of the Cal. Pub. Util. Comm’n, WC Docket No. 13-39 (filed May 14, 2013) at 2-4; Comments of the Pub. Service Comm’n of Wis., WC Docket No. 13-39 (filed May 13, 2013) at 2; Comments of Inteliquent, WC Docket No. 13-39 (filed May 13, 2013) at 2-4; Comments of Colo Telecomm. Ass’n et. al., WC Docket No. 13-39 (filed May 13, 2013) at 3-4; Comments of Bay Springs Tel. Co., Inc. et. al., WC Docket No. 13-39 (filed May 13, 2013) at 4; see also Comments of Bandwidth.com, Inc., WC Docket No. 13-39 (filed May 13, 2013) (“Comments of Bandwidth”) at 4-5.

¹⁰ See, e.g., Comments of ANPI at 5; Comments of AT&T, WC Docket No. 13-39 (filed May 13, 2013) at 2; Comments of CTIA – The Wireless Ass’n, WC Docket No. 13-39 (filed May 13, 2013) (“Comments of CTIA”) at 3; Comments of Comptel, WC Docket No. 13-39 (filed May 13, 2013) at 9-10; Comments of Sprint at 23; Comments of Time Warner Cable Inc., WC Docket No. 13-39 (filed May 13, 2013) at 7.

¹¹ See *In the Matter of Level 3 Communications, LLC*, File No. EB 12-0087, Consent Decree (DA 13-371), 28 F.C.C.R. 2274, 28 F.C.C. Rcd. 2274, 2013 WL 2100179 (Mar. 12, 2013).

favor of rates as much as 20 percent less. In ANPI's view, this is the beginning and end of the issue — there is no middle.”¹² Some other parties in their initial comments seek to divert the Commission's attention to other possible causes of poor call completion results in rural areas.¹³ One party denies that “intermediate carriers are used purely or primarily to perpetuate arbitrage ‘schemes’ intended to deprive local exchange carriers of their lawful access revenues and, as an unfortunate consequence, prevent RLEC end-users from receiving all of their calls.”¹⁴ Whether or not intermediate carriers are used “purely or primarily to perpetuate arbitrage ‘schemes,’” there is a clear admission here that such schemes “as an unfortunate consequence” cause rural call completion problems.

The Commission should not allow this docket to be turned into a shell game. The root cause of the rural call completion problem lies in schemes to bypass prevailing access charge structures in rural areas for economic advantage in a viciously competitive interexchange services market. No party denies that there is an incentive to bypass high rural access rates. No party denies that there are low cost, low quality terminating services being offered to the IXC market, and there are compelling admissions that such services are being used.¹⁵ No party effectively demonstrates that there is another primary cause of the rural call completion problem. In ANPI's view, there is no real issue here and any suggestion to the contrary is simply misleading. Even if the Commission were to find only that there is a reasonable probability that

¹² Comments of ANPI at 6.

¹³ See, e.g., Comments of Verizon at 6; Comments of Centurylink at 4; Comments of Sprint at 11-12; Comments of U. S. Telecom Ass'n, WC Docket No. 13-39 (filed May 13, 2013) at 6.

¹⁴ Comments of Sprint at 9.

¹⁵ See, e.g., Comments of Hypercube Telecom, LLC, WC Docket No. 13-39 (filed May 13, 2013) (“Comments of Hypercube”) at 11. (“Hypercube believes that a significant portion of rural call completion issues arise as a result of unconventional, low-quality, or limited-capacity arrangements utilized by some entities to complete traffic to the terminating rural ILECs, especially those that may rely on use of local interconnection arrangements to complete toll calls.”).

unlawful bypass schemes significantly contribute to call quality issues in rural areas, the Commission would have an obligation to attack such schemes more effectively. In order to develop a more effective regulatory approach to this problem, the Commission needs to keep its focus on combatting unlawful bypass schemes more effectively.

C. The Commission Should Reject Contentions that Rural Call Completion Does Not Require Urgent and Effective Regulatory Intervention

Several parties contend that the Commission need not adopt any further rules to address the rural call completion problems cited in the NPRM. If arbitrage schemes cause rural call completion problems, these parties contend that the Commission's already adopted reforms of intercarrier compensation effectively eliminate the incentive to engage in such schemes.¹⁶ These parties fail to recognize, however, that the Commission's carefully chosen glide path to a bill-and-keep access compensation system will take eight years.

Some parties incorrectly imply that the incentive to bypass the prevailing intercarrier compensation system will be eliminated this year.¹⁷ One party asserts that "[r]ate-of-return LECs' intrastate terminating switched end office and transport rates and reciprocal compensation, if above interstate access rates, will be at parity with interstate access rates in a matter of weeks... . [B]y July 1, 2013, there should be little incentive for carriers to use least cost routing as a means of avoiding higher intrastate access rates."¹⁸ This same party admits, however, that there will continue to be an incentive "to disguise the jurisdictional nature" of

¹⁶ See, e.g., Comments of Frontier Commc'ns Corp., WC Docket No. 13-39 (filed May 13, 2013) at 3-4; Comments of Sprint at 15-17; Comments of Time Warner Cable, Inc. at 6-7; Comments of AT&T, Inc. at 1-2; Comments of CTIA at 6-7.

¹⁷ See, e.g., Comments of Sprint at 15-16; Comments of Frontier Commc'ns Corp. at 3-4.

¹⁸ Comments of Sprint at 15-16.

traffic for economic gain.¹⁹ As ANPI noted in its initial comments, it has recently found probative evidence that long distance traffic was being transited over local trunks provisioned between the LEC customer's end office and the LEC's local transiting tandem in order to disguise the jurisdictional nature of that traffic and avoid paying any intercarrier access compensation.²⁰ The incentive to engage in such schemes will not suddenly disappear on July 1, 2013.

Those parties who oppose the adoption of rules in this proceeding also turn a blind eye to the diverse technologies carriers can and do employ, directly or indirectly, to find the lowest cost means to deliver a call to a rural area without regard to quality of service standards for interconnection, signaling and call hand-off. As ANPI noted in its initial comments, these technologies often include open source platforms employing Internet Protocol ("IP") ingress and egress routes with no quality of service standards.²¹ The use of such technologies will not cease on July 1, 2013.

Indeed, one party candidly admits in its initial comments that IP technologies enable telecommunications traffic to be exchanged in a "non-regulated and standard-less environment" in which "call failure rates will increase" absent effective intervention by the Commission.²² Echoing ANPI's initial comments, this party further describes "today's dynamic call routing environment" as one "in which carriers and non-carriers routinely use ever changing, direct routing or least cost routing tables geared to direct traffic through the most cost-effective transport and termination routes. These non-standardized routing arrangements go far beyond

¹⁹ *Id.* at 16.

²⁰ Comments of ANPI at 12.

²¹ *Id.* at 6.

²² See Comments of Bandwidth at 4-5.

the common understanding of least cost routing.”²³ In addition, this party states: “[c]all completion problems often arise, for example, when intermediate and terminating service providers attempt to bypass high rural LEC access rates by establishing and ‘advertising’ unconventional call completion arrangements with limited capacity (such as using PRIs to complete calls that should be completed through access trunks).”²⁴

Another party expresses similar concerns. Hypercube submits that:

some entities attempt to complete long-distance traffic destined for customers or rural ILECs through facilities or services designed for different purposes Any such unconventional, non-access based toll termination arrangements would essentially be re-origination schemes with limited capacity and would likely be incapable, in many cases, of handling the traffic the operators promise to deliver. Not surprisingly, such practices could be expected to frequently degrade the quality of calls and also would often lead to calls not being completed in the first instance. Further, any such routing schemes would be contrary to terminating LEC tariffs and may be deployed without the consent or knowledge of the LECs involved regarding the purposes to which they are being put.”²⁵

The submissions of these parties corroborate ANPI’s experience. As ANPI noted in its initial comments: “Regardless of their effect on service quality, the market offers lower cost solutions to carriers attempting to address compressing margins and rigorous, highly competitive market conditions.”²⁶ Moreover, the submissions of these parties support ANPI’s contention that rural call completion problems stem primarily from the economic incentive to bypass high rural ILEC access rates.

²³ *Id.* at 6.

²⁴ *Id.* at 9.

²⁵ Comments of Hypercube at 11.

²⁶ Comments of ANPI at 12.

Accordingly, and contrary to the contentions of some parties, there is an urgent need for the Commission to address effectively what is and has been a chronic rural call completion problem. The Commission's carefully chosen long glide path to a bill-and-keep intercarrier compensation system will not solve this problem anytime soon. The Commission should squarely reject contentions that no new rules are needed now to solve the rural call completion problem. Without effective regulatory intervention, the problem will only become worse.

D. The Initial Comments Show that the Data Reporting Policy Proposed in the NPRM is Flawed

In its initial comments, ANPI showed that the NPRM's proposed data reporting policy was flawed in several respects. First, the policy proceeds from a premise that the Commission must compare urban call completion performance to rural call completion performance. This requires compilation, reporting and retention of an enormous amount of data that will burden carriers and likely overwhelm the Commission's limited staff resources. To address these flaws, ANPI suggested adoption of acceptable thresholds of call completion performance for rural areas and exception reporting when thresholds are not met.²⁷ Many other parties showed in their initial comments that the NPRM's proposed requirements for compilation, reporting and retention of data would be unduly burdensome, but did not recommend effective alternatives.²⁸

ANPI also showed in its initial comments that the NPRM does not justify its proposed six-month retention period for reportable data. Assuming the Commission did not follow ANPI's recommendation of minimum standards and exception reporting, and required carriers to retain data on a granular CDR level, a voluminous amount of data would have to be retained for

²⁷ Comments of ANPI at 6-8.

²⁸ See, e.g., Comments of Sprint at 17-18; Comments of CTIA at 4-6; Comments of Level 3 Commc'ns at 16-17; Comments of Hypercube at 13-14; Comments of Windstream Corp., WC Docket No. 13-39 (filed May 13, 2013) at 2-4.

six months at a substantial cost to the carriers. To reduce the burden and cost of this requirement, ANPI suggested a three-month data retention period.²⁹ Another party pointed out this same flaw in the NPRM's data retention proposal and also recommended a three-month data retention period.³⁰

ANPI further demonstrated in its initial comments that the "safe harbors" proposed in the NPRM are unwarranted.³¹ Other parties also opposed the adoption of the "safe harbors" proposed in the NPRM.³² However, a number of parties not only supported the NPRM's proposed "safe harbors", but also maintained that the "safe harbors" should be expanded.³³ Inasmuch as the "safe harbors" are designed to exempt those able to reach their shelter from the NPRM's reporting requirements, the arguments in favor of those shelters and their expansion are entirely self-serving. They fail to demonstrate how the shelters would serve the public interest in solving the rural call completion problem. Accordingly, these arguments should be rejected.

E. The Commission's Policy Will Be Ineffectual If It Does Not Cover All Significant Providers of Terminating Services to the PSTN in Rural Areas

In its initial comments ANPI argued that any regulatory policy designed to address rural call completion effectively would have to apply to "any entity that is offering its services in conjunction with the termination of calls on the public switched network."³⁴ Such entities include not only carriers subject to FCC jurisdiction under Title II of the Communications Act,

²⁹ Comments of ANPI at 8-9.

³⁰ See Comments of Sprint at 19.

³¹ See Comments of ANPI at 10.

³² See, e.g., Comments of the Nat'l Exch. Carrier Ass'n, Inc., et. al., WC Docket No. 13-39 (filed May 13, 2013) at 16-20.

³³ See, e.g., Comments of CTIA at 9.

³⁴ Comments of ANPI at 9.

but also entities over which the FCC can assert and exercise “ancillary” jurisdiction in order to protect effectively the quality of PSTN service in rural areas. However the Commission chooses to define the entities subject to its directives in this docket, it cannot reasonably exclude entities that are or can be involved in terminating significant traffic to the PSTN in rural areas. As ANPI noted in its initial comments, those entities include not just traditional Title II interexchange carriers (“IXCs”). They also comprise enhanced service providers (“ESPs”), internet telephony service providers (“ITSPs”), voice over internet protocol (“VoIP”) service providers and wireless service providers, including commercial mobile radio service (“CMRS”) companies. As ANPI and other parties have shown in their initial comments, the latter entities “are now a significant part of the market offering termination of traffic to the PSTN on a wholesale basis to the broad IXC market.”³⁵

The initial comments of other parties include troubling positions that would undermine the comprehensive regulatory regime necessary to attack the rural call completion problem effectively. For example, The Voice on the Net Coalition (“VON”) maintains that the Commission at this point “has no basis to assert ancillary jurisdiction to impose such [reporting] requirements on interconnected VoIP providers.”³⁶ VON argues that the Commission must make findings that “link its exercise of ancillary authority to its Title II responsibility.”³⁷ VON fails to recognize, however, what the record plainly shows: VoIP providers are clearly involved in terminating significant traffic to the PSTN. In addition, there have been and continue to be

³⁵ *Id.*; see also Comments of Bandwidth at 4-9; Comments of Vonage Holdings Corp. at 1-2; Comments of CTIA at 4; Comments of Level 3 Commc’ns, WC Docket No. 13-39 (filed May 13, 2013) at 4-5 (“Both large and small intermediate providers can create rural call completion problems in the fluid and highly competitive wholesale market.”).

³⁶ Comments of VON, WC Docket No. 13-39 (filed May 13, 2013) at 5.

³⁷ *Id.* at 4 citing *Comcast Corp. v. FCC*, 600 F.3d 642, 656 (D.C. Cir. 2010).

serious problems in terminating calls to the PSTN in rural areas. These facts provide the only “link” necessary to the Commission’s fundamental Title II responsibility to protect the integrity of interstate telecommunications terminating on any portion of the national PSTN. Moreover, the Commission’s reasonable interpretation of an ambiguous statutory definition of its jurisdiction is entitled to deference where, as here, the Commission is exercising its unambiguous general rulemaking authority to achieve an unquestionable statutory purpose.³⁸

It would be pointless to adopt a policy that is less than comprehensive in this proceeding. Excluded entities capable of terminating traffic to the PSTN and evading the prevailing intercarrier compensation system would simply gain an unfair and unwarranted advantage over those entities required to comply with the policy. Such a policy would exacerbate conditions in an already dysfunctional market for terminating traffic to the PSTN. The Commission should reject any regulatory policy formulation that would produce such a perverse result.

F. As a Supplement or Alternative to a Reporting Policy, the Commission Should Require an Intra-Industry Certification Program that is Enforceable by the Commission

In its initial comments ANPI proposed various modifications to the NPRM’s reporting requirements to make those requirements more reasonable and less burdensome. As ANPI further noted, however, a data reporting policy, even if so modified, would not effectively attack the rural call completion problem. ANPI therefore recommended that the Commission “include a requirement that each reporting entity terminating traffic for another carrier, or terminating traffic originated by an entity other than the end users it serves, certify that it is terminating such traffic in compliance with all applicable intercarrier compensation orders and tariffs, and that it

³⁸ See *Arlington v. FCC*, 569 U.S. ____ (2013), No. 11–1545, (slip op. issued May 20, 2013).

has on file similar certifications from companies to which it is directing traffic for the purpose of terminating to the PSTN and to rural carriers in particular.”³⁹ Under this proposal it would be unlawful for any company that refused to provide such a certification to carry traffic for termination on the PSTN, and it would be unlawful for any carrier to direct such traffic to such a non-complying company.

AT&T seems also to favor an intra-industry certification process in its initial comments. AT&T argues that “intermediate providers” should “demonstrate their compliance with their obligations through certifications to their carrier-customers.”⁴⁰ However, AT&T favors this requirement as a clarification of a “safe harbor” proposed in the NPRM rather than as an independent regulatory obligation. Notably, AT&T views such obligations as a matter of private contract only, “subject to remedies under the contract for an inaccurate certification.”⁴¹ The process favored by AT&T would exclude regulators from any direct enforcement of certification obligations and leave the matter to carriers, who may or may not be motivated to expend the resources necessary to enforce whatever remedies may be available under a contract. AT&T fails to recognize what others candidly admit. “Contractual restrictions on customers who are willing to entertain the arbitrage schemes of other intermediate providers in unabashed efforts to strip cost from their business are increasingly difficult to enforce.”⁴² Moreover, contractual remedies could not completely remove from the market an entity that falsely certified to compliance with all FCC intercarrier compensation orders and applicable tariffs.

³⁹ Comments of ANPI at 9-10.

⁴⁰ Comments of AT&T at 4.

⁴¹ *Id.*

⁴² Comments of Bandwidth at 13.

ANPI's proposal would impose the certification obligation as a matter of Commission rule and would subject false certifications to the full range of penalties available to the Commission as if the certifications were being made to the Commission itself. Such certifications would then be subject to Sections 1.16 (unsworn declarations under penalty of perjury) and 1.17 (truthful and accurate statements to the Commission) of the FCC's rules, 47 CFR §§ 1.16 and 1.17. The Commission could revoke licenses or Section 214 authorizations for false certifications and thus remove offenders from the market.⁴³ The Commission should not rely on discretionary enforcement of contract remedies that are weaker than its own remedies. The nature and severity of the rural call completion problem demands a certification program that is enforceable by the FCC through strong penalties. Undefined "appropriate enforcement action" supported by Sprint,⁴⁴ among other parties, does not constitute a strong and effective FCC enforcement policy.

Although ANPI recommends the regulatory certification program as a supplement to the streamlined reporting program it supports, ANPI urges the Commission to adopt promptly and implement first rules for the certification program. One party has already predicted that new rules in this proceeding, assuming "a very aggressive schedule," could not go into effect before July 2014.⁴⁵ That is too long to wait for an effective regulatory response to a long standing, ongoing and serious rural call completion problem. Yet such a delay is all too likely if the Commission allows itself to be tied up by a Gordian knot of more than a thousand pages of

⁴³ The authorization to provide domestic interstate services generally granted by Section 63.01 of the Commission's rules, 47 C.F.R. § 63.01, in order to facilitate competitive entry does not preclude FCC revocation of that authority from a service provider engaged in activity that violates Commission rules or lawful tariffs.

⁴⁴ Comments of Sprint at 16; *see also* Comments of Hypercube at 17 ("new rules are not necessary to address call completion difficulties").

⁴⁵ *See* Comments of Sprint at 16-17.

detailed objections to the NPRM's reporting requirements. The Commission should immediately use the sword of enforceable certification requirements to cut through the mass of objections to the NPRM's proposed reporting requirements. If necessary, the Commission can deal with those objections in a later Order. The Commission may well find that the enforceable certification program provides a complete and effective remedy for the rural call completion problem.

The certification program recommended by ANPI is analogous to the certification program long employed for the Commission's Form 499 universal service assessment program. In order to determine whether revenues from resellers are exempt from universal service assessments, the Commission has allowed an entity filing a Form 499 to rely on a certification from a company purchasing service that "either the company contributes directly to the federal universal service support mechanisms, or that each entity to which the company provides resold telecommunications is itself an FCC Form 499 worksheet filer and a direct contributor to the federal universal service support mechanisms."⁴⁶ The certification is required "under penalty of perjury" and copies of all such certifications must be made available on request of the Commission.⁴⁷ Thus, the industry already has long and considerable experience in obtaining numerous carrier certifications comparable to what ANPI recommends here.⁴⁸

ANPI also recommended in its initial comments a concerted response by the FCC and state commissions to the rural call completion problem.⁴⁹ ANPI continues to recommend such an approach, particularly in respect to enforcement of the certification program ANPI proposes.

⁴⁶ 2013 Telecomm. Reporting Worksheet Instructions (FCC Form 499-A) at 23.

⁴⁷ See *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, FCC 12-134 at paras. 37-42, 27 F.C.C.R. 13780, 27 F.C.C. Rd. 13780, 2012 WL 5419336 (Nov. 5, 2012) ("*2012 Wholesaler-Reseller Clarification Order*").

⁴⁸ See *2012 Wholesaler-Reseller Clarification Order*, at para. 41, fn. 113 ("Several commenters . . . note that they obtain certifications from thousands of resellers.").

⁴⁹ See Comments of ANPI at 12-14.

If the Commission determines that it cannot impose a certification program that covers intrastate interexchange calls to rural areas, as some parties have suggested,⁵⁰ the Commission should urge state commissions, who share the FCC's concern for the integrity of the PSTN, to adopt the same program for intrastate calls. The FCC could also delegate parallel authority to enforce its certification program to any state commission that adopts a similar program. This step could induce state commission participation and expand the resources available to attack the rural call completion problem effectively. The Commission could also immediately convene a discretionary Federal/State Joint Board to consider and adopt these recommendations for a concerted regulatory response to the rural call completion problem.⁵¹ However, the Commission should first adopt ANPI's proposed certification program without delay to address effectively the chronic and serious problem with call completion in rural areas.

CONCLUSION

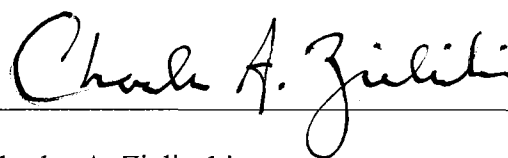
The evidence presented in the NPRM and in the initial comments of numerous parties in this proceeding show that the rural call completion problem addressed by the NPRM is undeniably real. The numerous members of Congress who have written to the Commission view rural call completion as an increasingly problematic and dire situation that demands an effective response from the Commission. Almost two years have passed since Acting Chairwoman Clyburn identified rural call completion as a significant problem that required the Commission's immediate focus and attention. The Commission has the ability to attack this problem vigorously and quickly. It requires only the will to expand modestly and enforce effectively its own rules. The Commission need only require by rule that every carrier certify, under penalty of

⁵⁰ See, e.g., Comments of Centurylink at 9; Comments of the National Ass'n of Regulatory Utility Commissioners, WC Docket No. 13-39 (filed May 8, 2013) at 5.

⁵¹ See 47 U.S.C. § 410(a).

forfeiting its legal authority to provide service, that it is complying with all applicable tariffs; that it is complying with all FCC rules with respect to intercarrier compensation; that it is not terminating interexchange traffic as local PSTN traffic; that it has similar certifications from every carrier to which it is handing off traffic for termination; that it keeps such certifications on file; and that it will produce such certifications on proper request from the FCC or any state regulatory commission. Further, the Commission must make this rule applicable to each and every entity that offers termination services, or terminates traffic to the PSTN in any way on behalf of another provider. The Commission should adopt the necessary Order and rules with all deliberate speed.

Respectfully submitted,

A handwritten signature in dark ink, reading "Charles A. Zielinski", written over a horizontal line.

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